COVINGTON & BURLING

PRIVILEGED AND CONFIDENTIAL
ATTORNEYS' WORK PRODUCT

May 20, 1986

MEMORANDUM FOR MR. HOLTZMAN

Re: Gaisch Draft on Questions and Answers Relating to Ingredients

We appreciate the opportunity afforded us to review Mr. Helmut Gaisch's suggestions for alternative answers to those in the Covington & Burling March 27, 1986 memorandum. In reviewing the Gaisch draft we have been mindful of the basic point made in Lee Pollak's memorandum that in Europe the issue will be looked at somewhat differently, because of differences both in regulation and in product composition. Mr. Pollak's memorandum, however, recognizes that the posture in Europe must be completely consistent with the approach taken in the United States.

Against that background we have several comments to make. We have not attempted to rewrite the Gaisch draft; it is my judgment that we could get mired in drafts and counterdrafts and our suggestions can be presented in this memorandum and then be considered by you and your associates. We have noted in the margins on the attached draft various subsidiary comments that may be helpful in your review of the draft. In addition, we have suggested a few minor language changes.

We offer the following basic observations:

1. Various passages (all of which carry the notation X in the margin on the attached draft) indicate that there is an abundance of public information (except for specific

2028456053

brand formulas) and that it is now possible to obtain a complete and detailed overview of ingredients "as the latest scientific information becomes continuously available 'on line' through specialized information services." This concept, giving the basic message that a tremendous amount of information on ingredients (we are not talking about components of tobacco smoke) is available, seriously undercuts the position we have tried constantly to maintain in the United States -- that the overall list of ingredients constitutes trade secrets and sensitive commercial information that should be maintained in confidence.

2. There are a number of statements in the Gaisch draft that we do not have the factual or scientific background to evaluate accurately. In some of these instances there may be a possible difference between the United States and, for example, Europe. I assume that before the comments are used in Europe you will satisfy yourselves of their accuracy. See in this connection the suggested answers to QA2, QA4, next to last paragraph of QA11, QA20, QA26, and the last two sentences in QA28, at the bottom of page 11.

3. In several instances the draft somewhat strengthens the statements in the Covington & Burling draft in answer to questions relating to the safety of ingredients, and might raise some question with product liability counsel. See, e.g., QA13 (suggesting that there is a continuous review mechanism and a scientific consensus on the safety of the use of

ingredients), QA17 (actually there is little "published scientific literature" on safety evaluation of ingredients in cigarettes), and QA34.

After you have reviewed our comments, we would be happy to discuss them with you.

Stanley L. Temko

jlk